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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,014	03/30/2004	Michael Weinberger	LOJM-0462	5570
7590 Michael Weinberger 236 West 26th Street New York, NY 10001		EXAMINER VASISTH, VISHAL V		
		ART UNIT 1797		
		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/814,014

Applicant(s)

WEINBERGER, MICHAEL

Examiner

VISHAL VASISTH

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4, 5 and 9-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-5 and 9-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's response filed on 8/5/2009 did not make any amendments to the claims. Applicant's arguments discussed below regarding claims 4-5 and 9-14 are not persuasive, for reasons discussed below, and therefore the 35 USC 103 rejection over Chen from the office action mailed on 3/5/2009 is maintained below and incorporated herein by reference. Applicant's arguments regarding the 35 USC 112 rejection from the office action mailed on 3/5/2009 were persuasive and therefore the 35 USC 112 rejection has been withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 4-5 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen, US Patent No. 5,199,413 (hereinafter referred to as Chen).

The rejection from Paragraph 2 of office action mailed on 3/5/2009 is maintained and incorporated herein by reference.

Response to Arguments

5. Applicant's arguments filed on 8/5/2009 with respect to claims 4-5 and 9-14 have been considered and are not persuasive.

Applicants argue that a res judicata type of precedent should apply because the claims 9 and 10 were allowable in an earlier office action. After an updated search, however, it was found that the claims as instantly recited are not in allowable form and therefore the instant claims went through more prosecution and the subsequent action was made non-final.

Applicants also argue that Chen teaches away from the solution sought by the instant application and therefore one of ordinary skill in the art would not be motivated to look to Chen. This argument is not persuasive. The mere fact that the two applications are trying to solve different purposes is not reason enough to say that Chen is teaching away from the instant claims. Chen may not be concerned with the appearance of the flame produced by its invention, but Chen and the instant claims produce the flames in the same manner through similar apparatuses.

Applicants further argue that the cooking basin (Item 3 of Chen) is not rigidly joined to the walls of the cartridge. Applicants define the rigid lid as:

FIG. 3 shows a cross sectional view of the fuel cartridge 10 and one configuration of a rigid lid 17. The rigid lid 17 shown is a "plug" type or "friction" type lid that seals the vapor exit aperture 16 after the fuel cartridge 10 has been filled with fuel 16A. The rigid lid 17 seals the fuel cartridge 10 by sitting snugly inside the vapor exit aperture 16, and can be removed by a consumer in order to use the fuel cartridge 10. Other types of lids may also be used, such as "easy off" scored metal lids of the type employed on sardine or soda cans.

Based on this definition the cooking basin acts as a plug type lid that seals any of the fuel vapors from exiting and ambient air from entering the burning system. Although the cooking basin is removable it is the position of the examiner that when it is on top of the cooking apparatus that the apparatus as a whole is in "one piece," and that one of ordinary skill in the art would envisage a one piece apparatus from the disclosure of Chen.

Finally, applicants argue that Chen does not disclose a gel fuel and that Chen's alcohol and glass fibers do not form a gel, because the glass fibers are incombustible. This argument is also not persuasive. Alcohol fuel of the type used in the instant claims are very well known in the art and even disclosed in Chen when discussing the background of the invention and spirit stoves using small, circular alcohol fuel containers. Sterno cans are an obvious type of gel fuel that one of ordinary skill in the art would envisage from the disclosure of Chen.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Kaufman, US Patent No. 6,035,768 (hereinafter referred to as Kaufman).

Kaufman discloses a portable heat unit comprising a number of rectangular panels joined to form an open-ended box with a lid, with a rigid member placed between two panels to permit control of burning of the fuel, heat flow, temperature and to define an opening through which the fuel can be exposed to air. The fuel can be a sterno can which is gelatinous fuel.

7. Applicants' amendment necessitated the new ground(s) of rejection presented in this office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VISHAL VASISTH whose telephone number is (571)270-3716. The examiner can normally be reached on M-R 8:30a-5:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571)272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VVV

/Glenn A Caldarola/
Acting SPE of Art Unit 1797